

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Group Art Unit: 3621
Examiner: Firmin Backer

Application of:	Walter D. BUIST
Serial No. :	10/666,817
Filing Date :	September 17, 2003
Entitled :	SYSTEM AND METHOD FOR MESSAGE COMMUNICATION

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Sir:

Applicant submits the following Brief on Appeal in connection with the above-identified patent application.

Applicant filed his notice of appeal on October 18, 2006. The shortened statutory period for filing the appeal brief expired on December 18, 2007. Applicant therefore requests a four (4)-month extension of time, extending the time for response from December 18, 2007 to April 18, 2007. A petition for extension of time accompanies this appeal brief.

Please charge the fee of \$1590.00 for the extension of time and any other necessary LARGE ENTITY fees to Deposit Account No. 16-2500 of the undersigned.

I. REAL PARTY IN INTEREST

The real party in interest in the above application is the assignee, UBS AG, having a place of business at Bahnhofstrasse 45, Zurich, Switzerland 8001.

II. RELATED APPEALS AND INTERFERENCES

There are no other prior or pending appeals, interferences or judicial proceedings known to applicant, the applicant's legal representative, or the assignee which may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-24 have been finally rejected.

The final rejection of Claims 1-24 is being appealed.

IV. STATUS OF AMENDMENTS

A Final Office Action was mailed May 19, 2006. On August 17, 2006, Applicant filed a Response to Final Office Action, dated May 19, 2006, in which Applicant did not amend Claims 1-24. An Advisory Action was mailed October 11, 2006, in which the Examiner stated that the reply filed August 17, 2006, failed to place the application in condition for allowance. This appeal followed.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Claims 1-24 are directed to various aspects of enabling a sender of a financial message adhering to a publicly-known field delimited protocol, such as the Financial Information Exchange (FIX) Protocol, to communicate a coded message having a

meaning *outside* of the publicly-known protocol. The FIX Protocol is an open standard specification for automating the trading of financial instruments that members of the financial community (the FIX committee) originated in 1992. (Specification ¶ 0002.) The FIX committee publishes the protocol and related information about the protocol on the Internet at www.fixprotocol.org. (*Id.*)

The FIX protocol was created for the purpose of streamlining a pre-existing manual process with a uniform, direct, computer-to computer mechanism for communicating interests in buying and selling, orders to buy and sell, and reports of purchases and sales of financial instruments. (Specification ¶ 0003.) It describes a standard set of electronic messages that can be exchanged for communicating interests in buying and selling, orders to buy and sell, and reports of purchases and sales of financial instruments. (*Id.*, ¶ 0004.)

The FIX protocol is generally referred to as a filed delimited or “tag equals value” type of protocol because each specific item (sometimes called a field) of financial data (e.g., order price, order quantity, etc.) is assigned a unique number called a tag. (Specification ¶ 0005.) Each item of financial data to be communicated according to the FIX protocol is arranged in a message sent with the tag followed by the equal sign character (“=”), followed by the item (field) value. (*Id.*)

For example, the FIX protocol has assigned the tag number 38 to the number of shares ordered. (Specification ¶ 0006.) A sender wishing to order 5000 shares of stock arranges the quantity ordered in a message with the tag number (“38”) followed by an

equal sign (“=”), followed by the number of shares ordered (“5000”), for a quantity ordered field of “38=5000.” (*Id.*)

In systems utilizing or derived from the FIX protocol, the message sender and receiver are constrained by the specifications of the protocol. (Specification ¶ 0007.) Buyers and sellers cannot interpret messages other than exactly how they are to be interpreted within the protocol. (*Id.*)

The present invention provides the benefits of removing the constraints of the specifications of the publicly-known field delimited protocol (*i.e.*, enabling buyers and sellers to communicate using messages *other than* the particular messages that are specified within the protocol), without adding additional cost or losing the benefits of using a publicly-known protocol for trading financial instruments.

The invention allows parties to define how values placed in the field value will be interpreted. (Specification ¶ 0009.) For example, the value may act as a code to change the meaning from the FIX protocol standard meaning to some other meaning different than the standard meaning.

For example, the invention of Claim 1 concerns a method for securely communicating financial information using a field delimited protocol, such as the FIX protocol. The first step of the method is receiving the message over an electronic computer network. The message comprises a financial data field (*e.g.*, order of shares, tag “38”) and a field value corresponding to the financial data field (*e.g.*, 5000). The message that has a standard, publicly-known meaning within the field delimited

“communication protocol” but is interpreted according to a coded meaning defined to be *different* than the standard, publicly-known meaning within the field delimited communication protocol.

For example, a buyer B may define that when a seller A inputs only a single digit in the quantity field of a tag 38 entry, the single digit is a coded message signifying a purchase order of a “single digit” x 10,000. (Specification ¶ 0031.) For example, where a seller A inputs “38=5,” buyer B would not interpret the message as an order for 5 shares (FIX meaning), but as an order for 50,000 shares (*different* from the FIX meaning). (*Id.*)

In another exemplary embodiment, a seller A may define a single digit in the quantity field of a tag 38 entry to be a coded message signifying a purchase order of a “single digit” x 1,000. (Specification ¶ 0032.) That would result in the message “38=5” being interpreted as an order for 5,000 shares instead 5 shares. (*Id.*)

In another exemplary embodiment, a buyer can communicate an indication of interest (IOI) in a stock to a receiver, not by sending a standard IOI message according to the FIX standard. (Specification ¶ 0033.) According to this embodiment, a buyer can communicate an IOI by sending an order message with a particular code number in the order quantity field of the order message. (*Id.*) A buyer, seller, or other party may agree that when a buyer sends an order message with a single digit in the quantity field of a tag 38 entry, the single digit is a coded message signifying an IOI for a “single digit” x 10,000. (*Id.*) The buyer’s message would not be interpreted according to the standard meaning of the FIX protocol, which would be an order for 3 shares. (*Id.*)

In other exemplary embodiments, the entries in the quantity field of a tag 38 entry, or other specified field, can be defined in any way. (Specification ¶ 0034.) For example, having only one digit present in the quantity field could be defined to indicate an IOI for “single digit” x 10,000, but having two digits present in the quantity field could be defined to indicate an order for “two digits” x 1,000. (*Id.*) In an alternate coding scheme, each number may correspond to a unique definition. (*Id.*) For example, having a “1” in the quantity field would indicate an order for 20,000 shares, a “2” an order for 25,000 shares, and a “3” an order for 27,500 shares. (*Id.*)

Independent Claims 7 and 13 also concern methods for securely communicating financial information in messages communicated according to a field delimited communication protocol so that the messages with to have meanings different from the standard, publicly-known meanings under the field delimited communication protocol. Claims 23, 23, and 24 concern apparatus or securely communicating financial information in messages communicated according to a field delimited communication protocol so that the messages with to have meanings different from the standard, publicly-known meanings under the field delimited communication protocol.

Dependent Claims 2-6, 8-12, 14-21, and 24 add additional limitations, where the field delimited protocol is the FIX protocol or a protocol derived therefrom (Claims 2, 8, 14), where the messages communicate a number of shares ordered or offered (Claims 3, 9), the number of shares to a financial transaction (Claims 5, 11, 16), an indication of interest (Claims 6, 12, 17) the financial data fields of the messages are FIX tag 38 entries

(Claim 4, 10), or the financial data fields are order fields (Claim 15). Claims 18, 19, 20 are directed to aspects of determining whether field values in messages match.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. US 2004/0030632 (Hausman).

VII. ARGUMENT

The Examiner Erred In Rejecting Claims 1-24 Under 35 U.S.C. 102(e) of As Being Anticipated By (Hausman).

“A claim is anticipated only if each and every element of the claim as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1990).

As we explain in greater detail below, the rejected claims recite a message comprising a single financial data field and corresponding value field that has two *different* meanings: a standard, publicly-known meaning within a field delimited protocol and a coded meaning defined to be different than the standard, publicly-known meaning within the field delimited protocol. Hausman shows two separate financial data fields, each having its own different meaning. Neither field has two meanings (*e.g.*, a standard meaning and a coded meaning). For this and other reasons set forth in detail below, the Examiner erred.

A. Claim 1

Claim 1 recites:

A method for securely communicating financial information, comprising:

receiving over an electronic computer network a message communicated according to a field delimited communication protocol pursuant to which the message comprises a financial data field and a field value corresponding to the financial data field and the message has a standard, publicly-known meaning within the field delimited communication protocol;

and interpreting said message according to a coded meaning defined to be different than the standard, publicly-known meaning within the field delimited communication protocol.

Hausman is directed to the trading of financial interests, and in particular to programs, methods, and systems for variable pricing and conditionally making available proposals for trading of financial instruments. (Hausman ¶ 0004.) Husman does reference embodiments in which messages are optionally formatted according to the FIX Protocol. (See, e.g., Hausman ¶¶ 0041, 0054.) However, Hausman does not teach, disclose, or suggest interpreting messages in the FIX Protocol to according to a coded meaning defined to be *different* than the standard, publicly-known meaning. Thus, it does not teach, disclose, or suggest interpreting said message according to a coded meaning defined to be *different* than the standard, publicly-known meaning within the field delimited communication protocol as recited in amended Claim 1. Claims 7, 13, 22, 23, and 24 are also patentably distinct from Hausman for at least the same reason.

The May 19 Office Action's response to the Applicant's arguments filed on March 14, 2006, is based on paragraph 0075 of Hausman. The Office Action describes paragraph 0075 of Hausman as teaching:

. . . [a] system wherein the user can designate the nature of the operand to be used in determining the term for his trading proposal by entering data in either one of fields 352, 353. By entering a message in field 352, the trader can designate that he/she wishes the term for his proposal to be set at a constant stated offset from the reference yen price, so that as the reference rises and/or falls, the term for the trader's proposal rises and/or falls at a constant offset. By entering a ratio in field 353, the trader can designate that the term for the proposal will float with the reference by the stated ratio. *For example, [were] a trader to enter "30" in field 352, the term for his proposal would float at a constant "30" dollar level above the reference yen price. Were the trader to enter "1.50" in field 353, the term would float at a constant 150% of the reference yen price. (see paragraph 075).*

(May 19 Office Action at 6 (original emphasis).)

That portion of Hausman does not disclose, teach or suggest interpreting a message that comprises a financial data field and a field value corresponding to the financial data field to be *different* than the standard, publicly-known meaning for that message within a field delimited communication protocol as recited in the independent claims.

Paragraph 0075 of Hausman discusses two different financial data fields that appear in Figure 5 of Hausman, which are labeled 352 and 353 in Figure 5. One field, 352, is for making a proposal that is "Additive." The other, 353, is for making a proposal that is "Multiplicative." Paragraph 0075 provides that the user of the system of Hausman can:

. . . designate the nature of the operand to be used in determining the price term for his trading proposal by entering data in either one of fields 352, 353. By entering a price step in field 352, the trader can designate that he/she wishes the price term for his proposal to be set at a constant stated offset from the reference yen price, so that as the reference yen price rises and/or falls, the price term for the trader's proposal rises and/or falls at a constant offset. By entering a ratio in field 353, the trader can designate that the price term for the proposal will float

with the reference yen price by the stated ratio. For example, were a trader to enter “30” in field 352, the price term for his proposal would float at a constant “30” dollar level above the reference yen price. Were the trader to enter “1.50” in field 353, the price term would float at a constant 150% of the reference yen price.

This portion of Hausman describes two *different* data fields, each having a field value that corresponds to the financial data field. Data field 352 is for making a proposal that will float at an additive amount entered into the corresponding field value, relative to the reference index entered in data input field 311 (*e.g.*, Yen). Data field 353 is for making a proposal that will float at an amount entered into its corresponding value field that is a multiple above the reference index entered in data field 311 (*e.g.*, Yen).

Neither of those two separate data fields, with corresponding value fields, describe a message comprising a financial data field and a corresponding value field as having two *different* meanings: 1) a standard, publicly-known meaning according to a field delimited communication protocol and 2) a coded meaning defined to be *different* than the standard, publicly-known meaning within the field delimited communication protocol. Hausman describes data fields 352 and 353 are two separate data fields, each of which, comprise a message that has one single meaning when numbers are entered into their corresponding value fields.

None of the other portions of Hausman cited in the May 19 Office Action (which are repeated from the previous office action of December 23, 2005) teach, disclose, or suggest interpreting the message according to a coded meaning defined to be *different*

than the standard publicly-known meaning within the field delimited protocol. (Office Action at 3, citing Hausman, Figs. 1, 4, and 5; ¶¶ 0005-00012, 0032, 0040, 0058.)

Paragraphs 0005-0012 of Hausman generally describe programs, methods, and systems for associating a proposal for a trade in at least one financial interest with at least one other financial interest or index, which may serve as a reference for effecting a condition of the proposal. (Hausman ¶ 0005.) For example, a trade in Microsoft stock can be proposed using a price associated with an actual or proposed trade in IBM stock as an index. (*Id.* ¶ 0010.) Paragraph 0058 of Hausman references an interface that enables a user to tie or peg an order, stated in terms of a first currency, for trading in a second currency, to a price limit in a third currency, so that terms for a posted order for the first currency are released, or made available, to other traders using the system when, or suspended as long as, the price of the third currency maintains a specified relationship to the specified limit. None of these portions of Hausman have anything to do with interpreting a message according to a coded meaning defined to be *different* than the standard publicly-known meaning within the field delimited protocol.

Hausman does disclose optionally using the FIX protocol in connection with programs, methods, and systems for associating a proposal for a trade in at least one financial interest with at least one other financial interest or index described in Hausman. That is not the same as using the FIX protocol in a manner in which FIX protocol messages are interpreted according to a coded meaning defined to be *different* than the

standard publicly-known meaning within the FIX field delimited protocol. That is not disclosed, taught, or suggested in Hausman.

B. Claim 7

Claim 7 (emphasis added) recites a method for securely communicating financial information, comprising “encoding a message communicated in a field delimited protocol . . . in which the message has a standard, publicly-known meaning within the field delimited protocol in which the message would ordinarily be interpreted to have a standard, publicly-known meaning, to have a *meaning different from the standard, publicly-known meaning . . .*” For the reasons discussed above with regard to Claim 1, Huasman does not teach, disclose, or suggest encoding a message in a field delimited protocol to have a meaning different from the standard-publicly-known meaning.

C. Claim 13

Claim 13 (emphasis added) is directed to a method for securely communicating financial information comprising receiving a first message communicated in a field delimited protocol over a first computer network and transmitting over a second electronic computer network a second message communicated in a field delimited protocol, wherein messages are encoded to have a “*meaning different from the standard, publicly-known meaning within the field delimited communication protocol.*” For the reasons discussed above with regard to Claim 1, Huasman does not teach, disclose, or suggest encoding a messages in a field delimited protocol to have a meaning different from the standard-publicly-known meaning.

D. Claim 22

Claim 22 is directed to an apparatus for securely communicating financial information comprising a receiver for receiving over an electronic computer network a message communicated in field delimited protocol and an “interpreter for interpreting the message to have a *different meaning from the standard, publicly-known meaning under the field delimited communication protocol.*” For the reasons discussed above with regard to Claim 1, Hausman does not disclose, teach, or suggest an interpreter for interpreting a message communicated in a field delimited protocol to have a different meaning from the standard, publicly-known meaning under the field delimited communication protocol.

E. Claim 23

Claim 23 is directed to an apparatus for securely communicating financial information, comprising an encoder for encoding a message in a field delimited protocol, wherein the encoded message “is intended to have a *different meaning from the standard, publicly-known meaning . . .*” For the reasons discussed above with regard to Claim 1, Hausman does not disclose, teach, or suggest an encoder for encoding a message in a field delimited protocol, wherein the encoded message is intended to have a different meaning from the standard, publicly-known meaning within the field delimited communication protocol.

F. Claim 24

Claim 24 is directed to an apparatus for securely communicating financial information, comprising a receiver for receiving over a first electronic computer network a first message communicated in a field delimited protocol; a transmitter for transmitting over a second electronic computer network a second message communicated in a field delimited protocol, wherein at least one of the messages is encoded and each encoded message is “*intended to have a meaning different from the standard, publicly-known meaning under the field delimited communication protocol . . .*” For the reasons discussed above with regard to Claim 1, Hausman does not disclose, teach, or suggest an encoder for encoding a message in a field delimited protocol, wherein the encoded message is intended to have a different meaning from the standard, publicly-known meaning within the field delimited communication protocol.

G. Dependent Claims 3 and 9

Dependent Claims 3 and 9 are patentably distinct from Hausman for the reasons discussed above with regard to Claims 1 and 7. They are also patentably distinct from Hausman for the additional reason that they recite that the messages communicate a number of shares offered.

H. Dependent Claims 6, 12, 17

Dependent Claims 6, 12, and 17 are patentably distinct from Hausman for the reasons discussed above with regard to Claims 1, 7, and 13. They are also patentably distinct from Hausman for the additional reason that they recite the additional limitation

of the messages communicating an indication of interest that is not disclosed, taught, or suggested in Hausman.

I. Dependent Claims 4 and 10

Dependent Claims 4 and 10 are patentably distinct from Hausman for the reasons discussed above with regard to Claims 1 and 7. They are also patentably distinct from Hausman for the additional reason that they recite the additional limitation of the financial data fields of the messages being FIX tag 38 entries that is not disclosed, taught, or suggested in Hausman.

J. Dependent Claim 15

Dependent Claim 15 is patentably distinct from Hausman for the reasons discussed above with regard to Claim 13. They are also patentably distinct from Hausman for the additional reason that it recites the additional limitation that financial data fields are order fields that is not disclosed, taught, or suggested in Hausman.

K. Dependent Claims 18, 19, and 20

Dependent Claims 18, 19, and 20 are patentably distinct from Hausman for the reasons discussed above with regard to Claim 13. They are also patentably distinct from Hausman for the additional reasons that it recite additional limitations that are directed to aspects of determining whether field values in messages match not disclosed, taught, or suggested in Hausman.

VIII. CONCLUSION

For the reasons set forth herein, it is requested that the final rejection of Claims 1-24, dated May 19, 2006, be reversed. Applicant's undersigned attorney may be reached at (212) 969-3413 or by facsimile at (212) 969-2900. Please continue to direct all correspondence to Customer No. 21890 at the address provided below.

Respectfully submitted,

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Date: April 18, 2007

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CLAIMS APPENDIX

1. A method for securely communicating financial information, comprising:
 - receiving over an electronic computer network a message communicated according to a field delimited communication protocol pursuant to which the message comprises a financial data field and a field value corresponding to the financial data field and the message has a standard, publicly-known meaning within the field delimited communication protocol;
 - and interpreting said message according to a coded meaning defined to be different than the standard, publicly-known meaning within the field delimited communication protocol.
2. The method of claim 1, wherein the field delimited communication protocol is the Financial Information Exchange (FIX) Protocol, or a protocol derived therefrom.
3. The method of claim 1, wherein the message communicates a number of shares ordered or offered.
4. The method of claim 1, wherein the financial data field is a FIX tag 38 entry.

5. The method of claim 1, wherein the coded meaning communicates a number of shares of a financial transaction to which the message pertains that is different than the standard, publicly-known meaning within the field delimited communication protocol.

6. The method of claim 1, wherein the message corresponds to an Indication of Interest (IOI) for a number of shares.

7. A method for securely communicating financial information, comprising:
encoding a message communicated in a field delimited communication protocol pursuant to which the message comprises a financial data field and a field value corresponding to the financial data field, in which the message has a standard, publicly-known meaning within the field delimited communication protocol in which the message would ordinarily be interpreted to have a standard, publicly-known meaning, to have a meaning different from the standard, publicly-known meaning; and
transmitting said encoded message over an electronic computer network.

8. The method of claim 7, wherein the field delimited communication protocol is the Financial Information Exchange (FIX) Protocol, or a protocol derived therefrom.

9. The method of claim 7, wherein the message represents a number of shares ordered or offered.

10. The method of claim 7, wherein the financial data field is a FIX tag 38 entry.
11. The method of claim 7, wherein the message corresponds to a number of shares of a financial transaction to which the message pertains.
12. The method of claim 7, wherein the encoded message corresponds to an Indication of Interest (IOI) for a number of shares.
13. A method for securely communicating financial information, comprising:
 - receiving over a first electronic computer network a first message, said first message in a field delimited communication protocol pursuant to which the first message comprises a first financial data field and a first field value corresponding to the first financial data field, in which the message has a standard, publicly-known meaning within the field delimited communication protocol;
 - transmitting over a second electronic computer network, a second message, said second message in the field delimited communication protocol comprising a second financial data field and a second field value corresponding to the second financial data field, in which the second message has a standard, publicly-known meaning within the field delimited communication protocol; and

at least one of said first and second messages being encoded, wherein each encoded message is intended to have a meaning different from the standard, publicly-known meaning within the field delimited communication protocol, wherein, said first and second electronic network and said first and second messages are not necessarily distinct.

14. The method of claim 13, wherein the field delimited communication protocol is the Financial Information Exchange (FIX) Protocol, or a protocol derived therefrom.

15. The method of claim 13, wherein the first and second financial data fields are order value fields.

16. The method of claim 13, wherein the first and second messages corresponds to a number of shares of a financial transaction to which the messages pertain.

17. The method of claim 13, wherein the first message corresponds to an Indication of Interest (IOI) for a number of shares.

18. The method of claim 13, further comprising:
determining whether corresponding entries first field value and the second field value match; and

if the match is successful, transmitting a notification to one or more broker/dealers.

19. The method of claim 18, wherein the transmitted notification is not encoded.
20. The method of claim 13, wherein said first message is encoded, and wherein said transmitted notification is made to a plurality of receivers, further comprising:
 - receiving from a receiver a reply to said second message; and
 - determining whether the first field value and the second field value match.
21. The method of claim 20, wherein if the match is successful, transmitting a notification to one or more broker dealers.
22. An apparatus for securely communicating financial information, comprising:
 - a receiver for receiving over an electronic computer network a message communicated in a field delimited communication protocol pursuant to which the message comprises a financial data field and a field value corresponding to the financial data field and the message has a standard, publicly-known meaning under the field delimited communication protocol, wherein the message is coded to have a meaning different than the standard, publicly-known meaning under the field delimited communication protocol; and

an interpreter for interpreting the message to have a meaning different from the standard, publicly-known meaning under the field delimited communication protocol.

23. An apparatus for securely communicating financial information, comprising:
 - an encoder for encoding a message in a field delimited communication protocol pursuant to which the message comprises a financial data field and a field value corresponding to the field of financial data and has a standard, publicly-known meaning under the field delimited communication protocol, wherein said encoded message is intended to have a meaning different from the standard, publicly-known meaning for entries in said specified field; and
 - a transmitter for transmitting said encoded message over an electronic computer network.

24. An apparatus for securely communicating financial information, comprising:
 - a receiver for receiving over a first electronic computer network a first message, said first message communicated in a field delimited communication protocol pursuant to which the message comprises a first financial data field and a first field value corresponding to the financial data field and has a standard, publicly-known meaning under the field delimited communication protocol;
 - a transmitter for transmitting over a second electronic computer network, a second message, said second message communicated in the field delimited

communication protocol pursuant to which the message comprises a first financial data field and a first field value corresponding to the field of financial data and has a standard, publicly-known meaning under the field delimited communication protocol; and

at least one of said first and second messages being encoded, wherein each encoded message is intended to have a meaning different from the standard, publicly-known meaning under the field delimited communication protocol;

wherein, said first and second electronic network, said first and second entries, and said first and second messages are not necessarily distinct.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.